

# Department of Defense **DIRECTIVE**

NUMBER 5500.17

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GC, DoD

SUBJECT: Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice

References: (a) DoD Directive 5500.17, "Review of the Manual for Courts-Martial," May 8, 1996 (hereby canceled)  
(b) Manual for Courts-Martial, United States  
(c) Chapter 47 of title 10, United States Code (Uniform Code of Military Justice)  
(d) Office of Management and Budget Circular A-19, "Legislative Coordination and Clearance," September 20, 1979  
(e) DoD Directive 5105.18, "DoD Committee Management Program," February 8, 1999  
(f) DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964

## 1. REISSUANCE AND PURPOSE

This Directive:

- 1.1. Reissues reference (a).
- 1.2. Implements the requirement established by the President that reference (b) be reviewed annually.
- 1.3. Formalizes the JSC and defines the roles, responsibilities, and procedures of the JSC in reviewing and proposing changes to reference (b) and proposing legislation to amend reference (c).
- 1.4. Is intended only to improve the internal management of the Federal Government; it is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

## 2. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Service of the Department of the Navy) and,

by agreement with the Secretary, Department of Transportation, the Coast Guard (when it is operating as a Service of the Department of Transportation).

### 3. POLICY

To assist the President in fulfilling his responsibilities under the Uniform Code of Military Justice (reference (c)), and to satisfy the requirements of Executive Order 12473, DoD shall review the Manual for Courts-Martial (reference (b)) annually, and, as appropriate, propose legislation amending reference (c) to ensure that references (b) and (c) fulfill their fundamental purpose as a comprehensive body of military criminal law and procedure. The role of the JSC furthers these responsibilities. Under the direction of the General Counsel of the Department of Defense, the JSC is responsible for reviewing reference (b) and proposing amendments to references (b) and, as necessary, to reference (c).

### 4. RESPONSIBILITIES

#### 4.1. The General Counsel of the Department of Defense shall:

4.1.1. Administer this Directive, to include coordination on and approval of legislative proposals to amend reference (c), approval of the annual review of reference (b), and coordination of any proposed changes to reference (b) under OMB Circular A-19 (reference (d)).

4.1.2. Designate a Military Service as the Executive Agent for the JSC. The Executive Agent shall act on behalf of the JSC in coordinating correspondence and processing changes to references (b) and (c) within the Department of Defense and other Federal Agencies, and in maintaining the JSC files and historical records.

4.2. The Secretaries of the Military Departments shall ensure that the Judge Advocates General of the Military Departments; the Staff Judge Advocate to the Commandant of the Marine Corps; and the Chief Counsel, United States Coast Guard, appoint representatives to the JSC.

### 5. EFFECTIVE DATE

This Directive is effective immediately.

Paul Wolfowitz  
Deputy Secretary of Defense

Enclosures 2

1. Composition and Role of the JSC
2. Guidance to the JSC

## El. ENCLOSURE 1

### COMPOSITION AND ROLE OF THE JSC

#### El.1. Composition of the JSC

The JSC consists of one representative of each of the following: the Judge Advocate General of the Army; the Judge Advocate General of the Navy; the Judge Advocate General of the Air Force; the Staff Judge Advocate to the Commandant of the Marine Corps; and, the Chief Counsel, United States Coast Guard. These representatives shall comprise the JSC Voting Group. The Associate Deputy General Counsel (Military Justice and Personnel Policy), Office of the General Counsel, Department of Defense, shall serve as the General Counsel's representative to the JSC in a non-voting capacity. In addition, the United States Court of Appeals for the Armed Forces (USCAAF) shall be invited to provide a staff member to serve as a representative to the JSC in a non-voting capacity. The JSC chairmanship rotates biennially among the Services in the following order: Army, Air Force, Marine Corps, Navy, and Coast Guard. Due to its size and manning constraints, a Coast Guard's request not to be considered for JSC chairmanship will be honored. The Military Service of the JSC Chairman will provide an Executive Secretary for the JSC.

#### El.2. Role of the JSC

The role of the JSC is to further the DoD policy established in section 3 of the main body of this Directive, above. The General Counsel of the Department of Defense also may direct the JSC to study issues or perform other duties related to the administration of military justice. (See DoD Directive 5105.18 (reference (e))).

## E2. ENCLOSURE 2

### GUIDANCE TO THE JSC

#### E2.1. Review of the Manual for Courts-Martial (Reference (b))

E2.1.1. The JSC shall conduct an annual review of reference (b), in light of judicial and legislative developments in military and civilian practice, to:

E2.1.1.1. Ensure reference (b) implements reference (c) and reflects current military practice and judicial precedent;

E2.1.1.2. Ensure the rules and procedures of reference (b) are uniform insofar as practicable;

E2.1.1.3. Ensure reference (b) applies, to the extent practicable, the principles of law and the rules of evidence generally recognized in the trial of criminal cases in United States district courts, but which are not contrary to or inconsistent with the UCMJ (reference (c)); and,

E2.1.1.4. Ensure reference (b) is workable across the spectrum of circumstances in which courts-martial are conducted, including specifically, in combat conditions.

E2.1.2. During this review, any JSC voting member may propose for the Voting Group's consideration an amendment to reference (b). Proposed amendments to reference (b) will ordinarily be referred to the JSC Working Group (WG) for study. The WG consists of non-voting representatives from each of the Services and the USCAAF. The WG assists the JSC in fulfilling its responsibilities under this Directive, assists the JSC in staffing various proposals, conducts studies of proposals and other military justice related topics at the JSC's direction, and makes reports to the JSC. Any proposed amendment to reference (b), if approved by a majority of the JSC voting members, becomes a part of the annual review.

E2.1.3. The JSC shall prepare a draft of the annual review of reference (b), and forward it to the General Counsel of the Department of Defense, on or about December 31. A copy of the report shall be sent to the Code Committee established by Article 146 of reference (c), with the invitation to submit comments on the draft review to the General Counsel of the Department of Defense.

E2.1.4. The draft review shall set forth any specific recommendations for changes to reference (b), including, if not adequately addressed in the accompanying discussion or analysis, a concise statement of the basis and purpose of any proposed change. If no changes are recommended, the draft review shall so state. If the JSC recommends changes to reference (b), the draft review shall so state. If the JSC recommends changes to reference (b), the public notice procedures of subsection E2.4.3, below, are applicable.

## E2.2. Changes to Reference (b)

E2.2.1. By January 31st of each year, the JSC voting members shall ensure that a solicitation for proposed changes to reference (b) is sent to appropriate agencies within their respective Services to include, but not limited to, the judiciary, trial and defense organizations, and the judge advocate general schools.

E2.2.2. The Federal Register announcement of each year's annual review of proposed changes to reference (b) shall also invite members of the public to submit any new proposals for JSC consideration during subsequent JSC annual reviews.

E2.2.3. When the JSC receives proposed changes to reference (b) either by solicitation or Federal Register notice, the JSC shall determine whether the proposal should be considered under E2.1.2 of this enclosure by determining if one or more of the JSC voting member(s) intends to sponsor the proposed change. The JSC shall determine when such sponsored proposals should be considered under the annual review process, taking into account any other proposals under consideration and any other reviews or studies directed by the General Counsel of the Department of Defense.

E2.2.4. Changes to reference (b) shall be proposed as part of the annual review conducted under E2.1 of this enclosure above. When earlier implementation is required, the JSC may send proposed changes to the General Counsel of the Department of Defense, for coordination under DoD Directive 5500.1 (reference (f)).

## E2.3. Proposals to Amend the UCMJ (Reference (c))

The JSC may determine that the efficient administration of military justice within the Armed Services requires amendments to reference (c), or that a desired amendment to the Manual for Courts-Martial (reference (b)) makes necessary an amendment to reference (c). In such cases, the JSC shall forward to the General Counsel of the Department of Defense, a legislative proposal to change reference (c). The General Counsel of the Department of Defense may direct that the JSC forward any such legislative proposal to the Code Committee for consideration under Article 146, UCMJ.

#### E2.4. Public Notice and Meeting

E2.4.1. Proposals to amend reference (c) are not governed by the procedures set out in this section. (See DoD Directive 5500.1 (reference (f)). This section applies only to the JSC recommendations to amend reference (b).

E2.4.2. It is DoD policy to encourage public participation in the JSC's review of reference (b). Notice that the Department of Defense, through the JSC, intends to propose changes to reference (b) normally will be published in the Federal Register before submission of such changes to the President. This notice is not required when the Secretary of Defense proposes that the President issue the change without such notice on the basis that public notice procedures, as set forth in this Directive, are unnecessary or contrary to the sound administration of military justice. The full text of the proposed changes, including discussion and analysis, normally will be published, unless the General Counsel of the Department of Defense determines that such publication in full would unduly burden the Federal Register.

E2.4.3. The Office of General Counsel of the Department of Defense will facilitate publishing the Federal Register notice required under this section.

E2.4.4. The notice under this section shall include a brief description of the matters contained in the proposed change, the time and place where a copy of the proposed change may be examined, and the procedure for obtaining a copy of the proposed change.

E2.4.5. A period of not fewer than 60 days after publication of notice normally shall be allowed for public comment, but a shorter period may be proscribed when the General Counsel of the Department of Defense determines that a 60-day period is unnecessary or contrary to the sound administration of military justice. The Federal Register notice will normally indicate that public comments shall be submitted to the Executive Secretary of the JSC.

E2.4.6. The JSC shall provide notice in the Federal Register and hold a public meeting during the public comment period, where interested persons will be given a reasonable opportunity to submit views on any of the proposed changes contained in the annual review. Public proposals and comments to the JSC should include a reference to the specific provision to be changed, a rationale for the proposed change, and specific and detailed proposed language to replace the current language. Incomplete submissions might be insufficient to receive the consideration desired. The JSC will seek to consider all views presented at the public meeting as well as any written comments submitted during the 60-day period when determining the final form of any proposed amendments to reference (b).

E2.5. Internal Rules and Record-Keeping

E2.5. 1. In furthering DoD policy, studying issues, or performing other duties relating to the administration of military justice, the JSC may establish internal rules governing its operation.

E2.5.2. The JSC shall create a file system and maintain appropriate JSC records.